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671 this attitude as due to the reluctance of the people to be classed with the more backward sections of the population. But there is also a more fundamental reason. Offences and litigation involve by their very nature dissension from established rules of conduct. It is thus often in the interest of offenders and litigants to dissociate themselves from traditional justice and to appeal to the rival law existing in the community. We shall see that in certain extreme cases the 'divided law' almost puts a premium on dissension from the traditional concepts of right and wrong.

692 In modern Nupe, then, Mohammedan law is paramount. The legal administration of the country is entrusted to *Alkalai*, judges trained in Mohammedan law, who reside in Bida and in the districts. The District Courts, of which there are seven in Bida Division, are courts of a lower grade—in official terminology, 'grade C courts'—that is, they are entitled to deal with civil cases involving fines up to £50 and criminal cases involving imprisonment up to six months, in case of theft up to twelve months. Bida town possesses a 'grade A court', the chief *Alkali*'s court, which combines the two different functions of a local court for the town and an appeal court for the districts. It has unlimited jurisdiction over all cases which under the Native Courts Ordinance are subject to the jurisdiction of Native Courts, i.e. excepting such cases as sedition, charges against Europeans, treason, trial by ordeal, and corruption of officials. The jurisdiction of the Bida Court also excludes homicide cases—an exceptional limitation which was imposed upon Bida after the disturbances of 1931. The *Etsu* with his councillors forms another 'grade A court' which deals with cases concerned with land, and constitutes at the same time a higher court of appeal for cases from the districts. The District Officer represents a final court of appeal for all cases. Cases excluded from native jurisdiction come before the High Court, which sits from time to time at the Headquarters of Niger Province, presided over by a professional British judge.

695 It is interesting to dwell for a moment on the description of a Native Court in action. Picture the court building: a spacious round house, with a gallery running round its outer wall. The *Alkali* has his place on a raised platform near the wall, books and papers spread out before him. On the floor, leaning against the platform, his assistant is sitting. In the Bida Court there are also scribes who take down the minutes of every case. Ushers, messengers, and sometimes policemen are standing at the doors. The Bida Court sits daily from 10 a.m. till 2 p.m., the District Courts whenever there are cases. The court procedure is very rigid. Plaintiffs and defendants are squatting in the centre of the court room, facing the judge, their hands folded in their laps; to rest one's hands on the ground means disrespect towards the *Alkali*. The place of witnesses is to the side and back of the plaintiffs and defendants. Women must sit in the outer gallery (at least in cases concerning divorce, adultery, and suchlike); they speak through a small window in the wall. You will recognize at once the peasant from the country: he sits there shy and frightened, often quite bewildered by the questions of the judge; often too, he has to be reminded to raise his voice, which is almost inaudible.

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695 But in the Bida Court temper may run high, especially when people of standing and wealth are involved who not infrequently will argue and remonstrate with the judge. I have seen judges lose their patience with such unmanageable parties, shout at them and threaten them with punishment for this 'contempt of court'.

692 Before the pretentious Bida Court with its office hours and fixed rules of procedure, its crowd of subordinate officials, assistants, scribes, ushers, policemen, a multitude of cases are brought daily which fit well into its up-to-date routine: offences against the by-laws of a modern town (riding a bicycle without light, or riotous behaviour in the street or the market, &c.) and all the various disputes bound to occur where you have an intensive trade, complicated money transactions, and suchlike. But before the same court come the cases (and in this book we are only concerned with these) that are the expression of tensions and conflicts of the society in its old unchanged form—cases of inheritance, divorce, witchcraft. The extension of native jurisdiction over the problems and conflicts of a modern urban community, which is merely a question of applying jurisdiction and executive under the guidance of the British Administration, is of less interest to us than the progressive penetration of formal political jurisdiction into the domains of traditional native life, which is a problem of legislation that the native society must itself solve. In this, the modern Native Court is the legitimate heir of the pre-British system of law—heir both to its strength and its weakness.

692 We may say that the modern legal system is both more comprehensive (embracing, above all, the domain of kinship) and, viewed from the 671 standpoint of the groups which submit to its jurisdiction, more alien than the old system. To explain this we must for a moment go back to a question discussed previously. I have said that every extension of a uniform jurisdiction and legislation over new social domains involves potentially the substitution of a new law for original codes and conceptions, and thus a certain disparity between the recognized law and the culture of which the old conceptions were an expression. This disparity is clearly a phenomenon of transition: every society will tend in the course of time to eliminate such a hiatus—either by reacting against the expanding judicial system and forcing it to adjust its too extravagant claims (we shall presently encounter instances of this)—or by completing that process of cultural assimilation of which the co-ordination of legal concepts represents only one aspect. We may assume that our table of jurisdiction in pre-British times, which shows a certain system of law firmly accepted throughout the society, refers to aspects of culture in which this process of mutual assimilation has been completed. Whether or not my hypothesis is historically correct, we must admit that where the process is still in motion, where the politically-backed law is only just extending its hold over new domains, the disparity of which I have spoken must be visible. This is indeed the case to-day, when Mohammedan law is being applied to kinship offences.

671 It would go beyond the scope of this book to study the relation between Mohammedan law as it is practised in Nupe and the traditional 182 concepts of kinship conduct and kinship rights and duties. I may be

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the supremacy of Idah, and established the independent Nupe kingdom which is eventually to become one of the most powerful native states in Nigeria.[2]

II.

The chain is the sacred relic of all *ledu* villages. It protects the village from sickness, and gives fertility to the women. But it has yet another, more special, meaning. It is also called *'ti dzana*, the 'head of Dzana,' and the story goes that Tsoede inaugurated the chain by beheading his own maternal uncle, Dzana, and placing head and chain together on the wooden tray as a permanent symbol for his power over life and death. From that day the chain remained an instrument of execution, and the villages which possess it are the ones to perform the execution; they are the 'king's hangmen.'[3] The jurisdiction over grave crimes lay in the hands of the king. They were actually termed *leifi nyá 'tsu*, 'crimes of the king.' But whenever such a grave crime was committed, the king had to summon the help of the *ledu*. The criminal was brought to the king's residence first. The king would then try the case, invoke the sacred ordeal, and pass the sentence. Then his own men would bring the criminal to the place of the execution, as a rule the *ledu* village situated nearest to the place of the crime. There men from the village put the criminal in irons, and led him into the bush where nobody could see him, tied the sacred chain round his neck, and strangled him. Finally they buried the corpse in the bush, and returned to their village, announcing to the king's messenger that 'everything had been done.'

The crimes which were regarded as such 'king's crimes' were: theft during the night, and big theft (*e.g.*, of cattle, or a horse); murder; and the crime of *lèse majesté*. In this case the *ledu* did not kill the criminal, but only flogged him severely, and drove him out of the territory of Nupe. In case the criminal was a man of high rank, perhaps of the ruling family, only the head towns, Jebba or Tada, could perform the execution.

Three men were the executioners in every village, and one amongst them was invariably the *ndáce*, the 'father of the shooting,' *i.e.*, the head of the hunter guild. There is a deep meaning in this. For a hunter is not only a man trained in hunting and killing, but he also possesses that essential magic which, after the act of killing, can expiate the deed, and propitiate the spirit of the dead. And through this element of propitiatory magic the killing of the guilty criminal is distinguished from all other killing. It ceases to be mere inflicting of death. It gains the dignity of a sacred office, and an almost ritual act.

Whether such beliefs went deeper than this; whether there existed a general superstition which made the people shrink from the idea of inflicting death on natives of their own village, and thus made them entrust this uncanny work to people from other places, or to people protected by special magic, I dare not decide. There certainly exists, still to-day a strong repugnance against having to do with all matters concerning death, and in particular unnatural death. Even the ordinary burial is carried out in secret, by one special family in every village which alone possesses the magical knowledge of burying the dead. But should a person be killed by lightning, or found murdered, no native of the village would come near the dead, but people from another village (or perhaps a village known for its special magic) would be called to perform this mysteriously perilous work. Yet, on the other hand, I have positive evidence that in certain places of Nupe, outside the

[2] A few words only about the possible historical basis of this tradition. According to the existing, very detailed, genealogies of the Nupe kings, Tsoede's life fell into the beginning of the sixteenth century. At that time Idah is said to have been, since long, under the supremacy of Benin. Now the big bronze figures at Jebba and Tada are cast in *cire perdue*, the same technic as the famous Benin bronzes—and a technic which does not exist, at least not in the same perfection, in Nupe country to-day. The chains and irons, finally, are evidently of European origin. They must have been brought into Nigeria by the Portuguese who, as we know, had established close contact, and an extended slave trade, with the king of Benin by the end of the fifteenth century. From Benin the bronze figures and chains might have reached Idah, and eventually Nupe, by the natural highway for trade and traffic, the Niger.—About the bronze figures see also Max, 1931, 261, and 1934, 193.

[3] The *ledu* are also known by the name *dogari nya Tsoede*, lit. the policemen of Tsoede. *Dogari*, however, is a Hausa word, which might have been adopted more recently. In one or two places I actually found an older term still remembered: *ete-cigbeci*, lit. the executioner-medicineman. This term evidently refers to the magical element connected with this office.